

110TH CONGRESS
1ST SESSION

S. 1465

To amend title XVIII of the Social Security Act to provide for coverage under the Medicare program of certain medical mobility devices approved as class III medical devices.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2007

Mr. CONRAD (for himself, Mr. ENZI, and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to provide for coverage under the Medicare program of certain medical mobility devices approved as class III medical devices.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. COVERAGE OF CLASS III MEDICAL MOBILITY**
4 **DEVICES.**

5 (a) COVERED BENEFIT.—Section 1861(s)(2) of the
6 Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

7 (1) in subparagraph (Z), by striking “and” at
8 the end;

1 (2) in subparagraph (AA), by inserting “and”
 2 at the end; and

3 (3) by adding at the end the following new sub-
 4 paragraph:

5 “(BB) class III medical mobility devices (as de-
 6 fined in subsection (ccc)(1)) furnished to a class III
 7 medical mobility-device eligible individual (as defined
 8 in subsection (ccc)(2));”.

9 (b) DEFINITIONS.—Section 1861 of the Social Secu-
 10 rity Act (42 U.S.C. 1395x) is amended by adding at the
 11 end the following new subsection:

12 “Class III MEDICAL MOBILITY-DEVICE; CLASS III
 13 MEDICAL MOBILITY-DEVICE ELIGIBLE INDIVIDUAL

14 “(ccc)(1) The term ‘class III medical mobility device’
 15 means a medical mobility device that has been approved
 16 as a class III medical device pursuant to a premarket ap-
 17 proval application under the Federal Food, Drug, and
 18 Cosmetic Act and that—

19 “(A) is able, among other functions—

20 “(i) to ascend and descend stairs using a
 21 climbing and descending function;

22 “(ii) to traverse different terrain and var-
 23 ious obstacles (including uneven terrain, curbs
 24 of 5 inches in height, grass, gravel and other

1 soft surfaces) using a 4-wheel drive function;
2 and

3 “(iii) to provide mobility in a seated posi-
4 tion at an elevated height using a balance func-
5 tion;

6 “(B) has been prescribed for a class III medical
7 mobility-device eligible individual (as defined in
8 paragraph (2)) by the individual’s treating physician
9 (as defined in subsection (r)(1)) for an approved in-
10 dication of the class III medical mobility device; and

11 “(C) is only dispensed after an assessment of
12 the class III medical mobility-device eligible indi-
13 vidual has been completed by a health care profes-
14 sional specified in paragraph (3) who has success-
15 fully completed training in making such assessments
16 under standards specified by the Secretary in con-
17 sultation with representatives of appropriate indus-
18 try and medical organizations.

19 “(2) The term ‘class III medical mobility-device eligi-
20 ble individual’ means, with respect to a class III medical
21 mobility device, an individual who, at the time the pre-
22 scription for the device is written, meets each of the fol-
23 lowing requirements:

1 “(A) The individual has a functional limitation
2 of mobility that hinders the individual’s ability to
3 perform mobility-related activities of daily living.

4 “(B) The individual’s use of the class III med-
5 ical mobility device is for approved intended uses of
6 the device.

7 “(C) The individual demonstrates sufficient
8 cognitive and physical ability for the proper and safe
9 operation of the device (such as sufficient use of one
10 upper extremity and the ability to dial a push button
11 telephone or operate a hand operated joystick) under
12 such medical standards as the Secretary may speci-
13 fy.

14 “(D) The individual meets drivers licensing cri-
15 teria established in 1996 by the Epilepsy Founda-
16 tion of America.

17 “(E) The individual is not a resident of an in-
18 stitution that meets the requirements of subsection
19 (e)(1) or section 1819(a)(1).

20 “(F) The individual has completed a com-
21 prehensive training program (that meets standards
22 developed by the Secretary in consultation with ap-
23 propriate industry representatives) on the safe oper-
24 ation of the class III medical mobility device and its
25 functions.

1 “(G) The individual was initially entitled to
 2 benefits under this title solely by reason of section
 3 226(b).

4 “(H) The residence of the individual—

5 “(i) has stairs that meet the conditions of
 6 use of the class III medical mobility device for
 7 a stair as indicated in the labeling of the device;
 8 and

9 “(ii) does not have a mechanical method to
 10 ascend or descend such a stair or stairs (such
 11 as an elevator or such other mechanical meth-
 12 ods as the Secretary may specify).

13 “(3) A health care professional specified in this para-
 14 graph is any of the following:

15 “(A) A physician (as defined in subsection
 16 (r)(1)).

17 “(B) A physician assistant.

18 “(C) A nurse practitioner.

19 “(D) A qualified physical therapist.

20 “(E) A qualified occupational therapist.”.

21 (c) CONFORMING AMENDMENTS.—

22 (1) PROVISION OF CLASS III MEDICAL MOBILITY
 23 DEVICE ONLY TO CLASS III MEDICAL MOBILITY-DE-
 24 VICE ELIGIBLE INDIVIDUAL; MEDICAL NECESSITY.—

1 Section 1862 of the Social Security Act (42 U.S.C.
2 1395y) is amended—

3 (A) in subsection (a)(1)—

4 (i) in subparagraph (M), by striking
5 “and” at the end;

6 (ii) in subparagraph (N), by striking
7 the semicolon at the end and inserting “,
8 and”; and

9 (iii) by inserting after subparagraph
10 (N) the following new subparagraph:

11 “(O) in the case of a class III medical mo-
12 bility device (as defined in paragraph (1) of sec-
13 tion 1861(ccc)), which is furnished other than
14 to a class III medical mobility-device eligible in-
15 dividual (as defined in paragraph (2) of such
16 section);” and

17 (B) by adding at the end the following new
18 subsection:

19 “(n) CLARIFICATION OF COVERAGE OF AND PAY-
20 MENT FOR ALL FUNCTIONS OF CLASS III MEDICAL MO-
21 BILITY DEVICES.—In the case of a class III medical mo-
22 bility device (as defined in section 1861(ccc)(1)) furnished
23 to a class III medical mobility-device eligible individual,
24 each function of such device, including the functions de-
25 scribed in subparagraph (A) of such section, are deemed

1 for purposes of subsection (a)(1), to be reasonable and
 2 necessary for the treatment of an illness or injury or to
 3 improve the functioning of a malformed body member.”.

4 (2) PAYMENT IN CONNECTION WITH COVERED
 5 ITEMS; PURCHASE AGREEMENT OPTION; MAINTENANCE.—Section 1834(a) of the Social Security Act
 6 (42 U.S.C. 1395m(a)) is amended—
 7

8 (A) in paragraph (1)(B)(ii), by inserting
 9 “and paragraph (22), in the case of a class III
 10 medical mobility device,” after “(7)”;

11 (B) in paragraph (13), by inserting before
 12 the period at the end the following: “, and also
 13 includes a class III medical mobility device (as
 14 defined in section 1861(ccc)(1))”; and

15 (C) by adding at the end the following new
 16 paragraph:

17 “(22) PAYMENT FOR CLASS III MEDICAL MOBIL-
 18 ITY DEVICES.—

19 “(A) IN GENERAL.—Subject to the suc-
 20 ceeding provisions of this paragraph, in the case
 21 of a class III medical mobility device (as de-
 22 fined in section 1861(ccc)(1)), the provisions of
 23 paragraph (7) (including the option for a pur-
 24 chase agreement under subparagraph (A)(iii) of
 25 such paragraph) shall apply to such device

under this paragraph in the same manner as those provisions apply to a covered item under paragraph (7).

“(B) PAYMENT FOR ALL FUNCTIONS OF CLASS III MEDICAL MOBILITY DEVICES.—In the case of a class III medical mobility device, payment under this paragraph for such device shall be made taking into account all functions of such device, consistent with section 1862(n).”.

(3) REQUIREMENT FOR FACE-TO-FACE ENCOUNTER WITH A PHYSICIAN AND FOR WRITTEN PRESCRIPTION.—Clause (iv) of section 1834(a)(1)(E) of the Social Security Act (42 U.S.C. 1395m(a)(1)(E)) is amended—

(A) by adding at the end the following: “In the case of a covered item consisting of a class III medical mobility device (as defined in paragraph (1) of section 1861(ccc)) for a class III medical mobility-device eligible individual (as defined in paragraph (2) of such section), payment may not be made for such item unless a physician (as so defined) has conducted such examination and written such prescription for the item, and after an assessment of such individual has been completed by a health care pro-

1 fessional specified in paragraph (3) of such sec-
2 tion.”; and

3 (B) in the heading, by inserting “AND
4 CLASS III MEDICAL MOBILITY DEVICES” after
5 “WHEELCHAIRS”.

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to items and services furnished on
8 or after the date of the enactment of this Act.

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